SUMMARY OF THE OFFICE ACTION

1. Claims 1, 2, 6, 8-11, 15, 18-21, 24 and 25 Have Been Rejected under 35 USC 102(b) As Anticipated by, or in the Alternative, Unobvious over de Keller (U.S. Patent No. 5,975,529)

2. Claims 22 and 23 Have Been Rejected Under 35 USC 103(a) As Unobvious over de Keller.

3. Claims 3-5, 7, 12-14, 16 and 17 Have Been Rejected Under 35 USC 103(a) As Unobvious over de Keller and Further in View of Breeding (specific Breeding Patent ambiguously cited).

RESPONSE TO THE OFFICE ACTION

1. Claims 1, 2, 6, 8-11, 15, 18-21, 24 and 25 Have Been Rejected under 35 USC 102(b) As Anticipated by, or in the Alternative, Unobvious over de Keller (U.S. Patent No. 5,975,529)

It is believed that the de Keller reference is not available under 35 USC 102(b) as a reference in view of the priority date chain established for the present application. In this regard, the Examiner is requested to review the Table below showing priority for the concepts in the limitations in the claims from the earliest application in the priority chain, which application antedates the filing date of the de Keller reference.

RECITATION OF CLAIM 1	PRIORITY LANGUAGE IN
A method of playing a wagering game, comprising:	"Card-type games provide at least one player with the option of wagering against either a predetermined payout schedule, a dealer's hand, or both." (Abstract)
placing a first multiple part wager to participate in a first poker-type game;	"(a) determining whether to place a first bet that the player's hand will be greater than a first predetermined rank, where a plurality of hands are ranked according to predetermined rules and the first bet is a fixed payout bet;" (Claim 1) "A method of playing a card game according to claim 23 wherein said card deck is a conventional card deck comprising at least fifty-two cards, and each hand comprises four cards and each player combines said wild card indicia with four indicia of playing cards to form a five card poker hand." (Claim 24)
optionally placing a side bet wager to participate in a second poker-type game played against a pay table;	"(a) determining whether to place a first bet that the player's hand will be greater than a first predetermined rank, where a plurality of hands are ranked according to predetermined rules and the first bet is a fixed payout bet;" (Claim 1) and "(b) determining whether to place a second bet that the player's hand will beat the dealer;"

	(Claim 1)
dealing a partial hand for the first poker-type game consisting of multiple cards to each player who placed a first wager, the partial hand for the first poker-type game being a complete hand for the second poker-type game;	"The card of FIGS. 4-6 has a dual function; in playing the game it is used as a wild card; subsequently the card can be taken away by the player and retained as a momento and also serves as a promotional item. In a three-card version of the game described above, a player may be provided with two standard cards and a wild card to form a three-card hand. Alternatively, at least one player may be provided with three cards and be permitted to discard one card in order to form his/her best three-card hand using the wild card. Similarly, in four and five-card versions of the game a wild card of the kind shown in FIGS. 4-6 may be issued to each player and to the dealer. The players and dealer then use the wild card repeatedly in conjunction with each four card hand dealt to them to make a five-card poker hand. In a five-card game each player and the dealer may substitute the wild card for any card in their hand to improve the five-card hand they hold. This has the result of creating higher hand values and adding excitement to the game. According to each of these embodiments, the dealer is also preferably provided with the same number of standard cards and a wild card as provided to each player." **The additional card indicates that the original hand is only a partial hand.**
providing community cards to complete partial hands in the first poker-type game; and	"According to each of these embodiments, the dealer is also preferably provided with the same number of standard cards and a wild card as provided to each player." **The single wild card to all players is a community card.**
resolving each player's multiple part wager according to the rules of the first poker-type game and resolving the second poker-type wager according to a predetermined hierarchy of poker hands in a pay table.	"if the dealer's hand does not exceed the second predetermined rank, the bank paying each player an amount based on the second bet and returning the third bet to the player, or if the dealer's hand exceeds the second predetermined rank, comparing the dealer's hand in turn with that of each other player who placed the second bet and if the player's hand is higher, the banker paying the player an amount based on both the second and third bets, and if the player's

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	hand is lower, the player forfeiting both the second and third bets to the banker; and (g) the banker paying the fixed payout bet in accordance with a predetermined scale to any player who placed the first bet and whose hand exceeds the first predetermined rank." (Claim 1)

As can be seen, the concept of Claim 1 of the present application finds antecedent basis in parent application and issued patent U.S. Patent No. 5,685,774 issued November 11, 1997, **but filed on July 19, 1995**. That filing date provides a date prior in time to the available reference date of the de Keller reference, which is that patent's filing date of **September 11, 1995**. The de Keller reference is therefore not available as a reference under 35 USC 102(b) as it is not prior to the established priority date of the present application and claims.

Note that the original specification of this Application as filed stated and claimed priority as:

"This application is a continuation-in-part of U.S. Patent Application Serial No. 10/016,436, filed April 29, 2002, titled Player Banked Three Card Poker and Associated Games, which in turn is a continuation-in-part of U.S. Patent Application Serial No. 09/249,118 filed February 2, 1999 which in turn is a continuation-in-part of U.S. Patent Application Serial No. 09/170,092 filed October 13, 1998, now U.S. Patent No. 6,237,916 issued May 29, 2001, which is a continuation-in-part of U.S. Patent Application Serial No. 08/889,919 filed July 10, 1997 now U.S. Patent No. 6,056,641 issued May 2, 2000, which is a division of U.S. Patent Application Serial No. 08/504,023 filed July 19, 1995, now U.S. Patent No. 5,685,774 issued November 11, 1997."

This priority date is established and is effective in overcoming the de Keller reference.

2. <u>Claims 22 and 23 Have Been Rejected Under 35 USC 103(a) As Unobvious over</u>

   <u>de Keller.</u>

As the de Keller reference has been shown to be unavailable as a matter of law as a "prior art" reference under 35 USC 102(b), this rejection must fail for at least the same reasons described directly above.

3. Claims 3-5, 7, 12-14, 16 and 17 Have Been Rejected Under 35 USC 103(a) As Unobvious over de Keller and Further in View of Breeding (specific Breeding Patent ambiguously cited).

As the de Keller reference has been shown to be unavailable as a matter of law as a "prior art" reference under 35 USC 102(b), this rejection must fail for at least the same reasons described directly above.

Additional and Separate Arguments on the Merits with Respect to New Claims

New Claim 26 reads (with **highlighted** changes from claim 1 emphasized):

26. A method of playing a wagering game **against only pay tables**, comprising:
placing a first multiple part wager to participate in a first poker-type game **against only a pay table**;
optionally placing a side bet wager to participate in a second poker-type game played against a pay table;
dealing a partial hand for the first poker-type game consisting of multiple cards to each player who placed a first **multiple part** wager, the partial hand for the first poker-type game being a complete hand for the second poker-type game;
providing community cards to complete partial hands in the first poker-type game; and
resolving each player's multiple part wager according to the rules of the first poker-type game and resolving the second poker-type wager according to a predetermined hierarchy of poker hands in a pay table.

Separate and Individual Arguments on the Merits as to Why de Keller Does Not Anticipate Claim 1 and claims dependent therefrom.

It is asserted in the Rejection that de Keller shows, with respect to original claim 1:

1) multiple part wagers (All players make bets of equal value in their respective pots, then place Bet 1 (Col. 2, lines 54-64, and Fig. 1, elements 5, 6 and 7);

2) An optional side bet bonus wager (Col. 5, lines 8-21);

3) At the beginning of each hand, each player is dealt two cards, although this number may vary, one face up and two down. (Col. 2, lines 58-63). Asserting that three cards as partial hands are obvious;

4) The three dealer's cards are community cards completing each player's hands (Col. 2, lines 63-66);

5) The first multi-part wager is resolved according to the rules of 5-card poker (Col. 4, lines 39-44) with a 5-card poker pay table (Col. 4, lines 53-56);

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6) The optional side wager is resolved according to 3-card poker (Col. 5, lines 9-21); and

7) Each part of the wager is equal (Col. 2, lines 58-60).

Although the essence of some of these teachings in de Keller is correct, the underlying game of de Keller has numerous other requirements that should be emphasized as excluding anticipation and obviousness from de Keller. One important failure of de Keller under 35 USC 102(b) is the fact that de Keller does not place **initial** multiple part wagers. Applicants had thought that the term "first" was sufficient to emphasize that point, but have amended to claims to indicate by initial that these multiple part wagers are placed prior to the player viewing dealt cards. One this basis alone, every rejection under 35 USC 102(b) is in error, and there has been no showing of this limitation sufficient to teach modification of that limitation under 35 USC 103(a). The rejections are therefore in error.

Note also the proposed new claim 26 wherein the game has been limited to play against only pay tables. This provides a clear avoidance of de Keller who has competition against a pay table **and** player-versus-player. It also would not be obvious to eliminate the fundamental requirements of de Keller's game in which the multi-part wagers are required only because of the additional elements of the game.

Claim 27 focuses on the fact that the multi-part wagers are part of the same game and are resolved according to a single event in a single game. This strongly differentiates the subject matter of de Keller.

It is asserted that de Keller in view of Breeding teaches the limits of claims including "…withdrawal of a part of the multiple part wager before a first community card is disclosed to the player, with the player remaining in play in the first poker-type game…" This issue may be more complex, for a number of reasons. Having distinguished de Keller for lacking multi-part wagers on the same game and playing against only pay table, Breeding teachings both of those elements, in addition to bet withdrawal.

CONCLUSION

All rejections have been shown to be in error. As such, the application and claims are in condition for allowance.
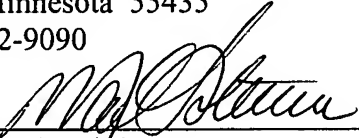
Respectfully submitted,

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By Their Representatives,

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Date:___24 MAY 2005_____   By:_____
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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop: AMENDMENT, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on___24 MAY 2005_____

Mark A. Litman_____   _____
Name   Signature